

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-711

December 29, 1998

CENTRAL MAINE POWER COMPANY
Request for Waiver of Notice
Requirements and Request for
Approval of the Issuance of a
Certificate of Public Convenience and
Necessity for the Purchase of Energy
and Generating Capacity from CinCap V,
L.L.C Pursuant to 35-A M.R.S.A. § 3133

ORDER APPROVING
STIPULATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioner

I. SUMMARY OF DECISION

In this Order, we approve the Stipulation filed in the above matter on behalf of Central Maine Power Company (CMP or the Company) and the Public Advocate and waive the filing fee set forth in 35-A M.R.S.A. § 3133(8), the notice requirements set forth in 35-A M.R.S.A. § 3133(2), and the information filing requirements set forth in Chapters 332(6) and 332(7) of the Commission's rules. Under the terms of the Stipulation, the Company is authorized to enter into a replacement Power Purchase Agreement (Replacement PPA) with CinCap V (CinCap) as part of a buyout agreement associated with the Company's Power Purchase Agreement (Existing PPA) with Northeast Empire Limited Partnership #1 (NELP #1). The Stipulation also governs how the annual net savings associated with the restructuring will be calculated for the purpose of determining the annual net savings to be shared in accordance with Paragraph #8 and Attachment C of the Alternative Rate Plan (ARP) Stipulation (Docket No. 92-345 (II)).

II. PROCEDURAL HISTORY

On September 11, 1998, CMP filed a request for approval of a certificate of public convenience and necessity for the purchase of energy and generating capacity from CinCap, L.L.C., a subsidiary of Cinergy Capital and Trading Inc., pursuant to 35-A M.R.S.A. § 3133. This transaction was filed as part of a buyout agreement associated with CMP's Existing PPA with NELP #1. On December 22, 1998, CMP filed a Stipulation on behalf of itself and the Public Advocate that, if approved, would authorize a Replacement PPA between CinCap and CMP substantially similar to the agreement filed on October 19, 1998 in this proceeding.¹

¹ In response to Examiner's Data Request 01-01, CMP indicated that, although the Replacement PPA submitted to the Commission in

III. DISCUSSION

The NELP #1 facility is a biomass-fired power plant located in Livermore Falls, Maine. Pursuant to its Existing PPA, CMP is obligated to purchase energy and capacity from the NELP #1 facility through December 31, 2021, although CMP is permitted to elect an early termination date of December 31, 2016. However, CMP has negotiated a restructured agreement under which CinCap will purchase the Existing PPA from NELP #1 and terminate that agreement; NELP #1 will then be free to run its facility as a merchant plant after the termination of the existing PPA. CMP will enter into a Replacement PPA with CinCap that will run through December 31, 2016, the expected termination date of the Existing PPA. Under the Replacement PPA, CMP will be required to purchase 40 MW of installed capability and associated energy rather than the 34 MW of committed capacity it is required to purchase under the Existing PPA. However, the rates in the Replacement PPA are lower than the rates in the Existing PPA. CMP anticipates that this difference will yield a net present value savings of approximately \$20 million.

Under the terms of the Stipulation, the parties agree that:

1. The filing fee set forth in 35-A M.R.S.A. § 3133(8), the notice requirements set forth in 35-A M.R.S.A. § 3133(2), and the information filing requirements set forth in Chapters 332(6) and 332(7) of the Commission's rules should be waived;

2. The Commission should issue a certificate of public convenience and necessity for CMP's entry into a Replacement PPA substantially similar to the version filed by the Company on October 19, 1998 and for any modifications thereto which do not have a material adverse effect on CMP's rights and obligations thereunder;

3. For the purpose of calculating the annual net savings to be shared in accordance with Paragraph #8 and Attachment C of the ARP, the annual net savings from the restructuring should be estimated as the difference between the Existing PPA costs and the Replacement PPA costs.² The Existing PPA costs should be

the instant proceeding is considered to be the final version, it seeks authority to enter into modifications to the Replacement PPA that will not have a material adverse effect on CMP's rights and obligations. The Company indicated that this flexibility is necessary to allow for any unexpected event, such as last-minute modifications requested by CinCap's lenders, that could occur.

² Currently, CMP's ARP is scheduled to expire at the end of 1999 and, therefore, the last relevant period for savings under Paragraph #8 would be calendar year 1998. Because there are no

calculated assuming the NELP #1 facility would have generated 238,272 MWh/year and that CMP would have paid for that output under the terms of the Existing PPA. The Replacement PPA costs should be estimated as:

- The sum of the actual payments to CinCap for Reservation Payments and for electric energy (up to 238,272 MWh/year), Operable Capability and Installed Capability, pursuant to the Replacement PPA during the year, plus;
- The actual costs of any replacement energy purchased by CMP during the year as a result of CinCap delivering less than 238,272 MWh in that year (provided, however, that for purposes of this calculation, CMP's replacement energy costs shall not exceed the amount that would have been paid to CinCap for the energy that is being replaced), minus;
- The market value associated with Installed Capability in excess of 34 MW. For capability which is resold by CMP, the market value shall be the amount received by CMP for the capability sold. For Installed Capability which is not resold, the market value shall be rebuttably presumed to be the amount set forth in column #9 of CMP's financial analysis of the buyout transaction, which financial analysis was filed on October 19, 1998, minus;
- Any financial gain experienced by CMP during that year as a result of purchasing electric energy from CinCap in excess of 238,272 GWh/year under the terms of the Replacement PPA, plus;
- Any financial loss experienced by CMP during that year as a result of purchasing electric energy from CinCap in excess of 238,272 GWh/year under the terms of the Replacement PPA.

We have considered the Stipulation under our general criteria for approving such agreements: whether the parties joining the Stipulation represent a sufficiently broad spectrum of interests; whether the process that led to the Stipulation was fair; and whether the stipulated result is reasonable, not contrary to legislative mandate, and in the public interest. See *Public Utilities Commission, Investigation Into Regulatory*

savings from this contract restructuring in 1998, this provision of the Stipulation appears to have no meaning, except if the existing ARP is extended, in its current form, beyond the end of 1999. Therefore, we may need to address the ratemaking treatment in a future proceeding.

Alternatives for the New England Telephone and Telegraph Company d/b/a NYNEX, Docket No. 94-123 at 4-5 (Mar. 17, 1998). Taking these general criteria into account and upon review of the transaction and the specific terms of the Stipulation, we find the agreement to be reasonable and not contrary to the public interest.

Accordingly, we

O R D E R

1. That the filing fee set forth in 35-A M.R.S.A. § 3133(8), the notice requirements set forth in 35-A M.R.S.A. § 3133(2), and the information filing requirements set forth in Chapters 332(6) and 332(7) of the Commission's rules are waived; and

2. That the Stipulation filed by Central Maine Power Company on December 22, 1998 in Docket No. 98-711 is hereby approved without modification.

Dated at Augusta, Maine this 29th day of December, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent (via telephone)
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.